



STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.bpu.state.nj.us

TELECOMMUNICATIONS

| | |
|---|--------------------------|
| IN THE MATTER OF THE PETITION FOR AN) | <u>ORDER OF APPROVAL</u> |
| ORDER AUTHORIZING NOS) | |
| COMMUNICATIONS, INC. TO PROVIDE LOCAL) | |
| EXCHANGE AND INTEREXCHANGE) | |
| TELECOMMUNICATIONS SERVICES) | |
| THROUGHOUT NEW JERSEY) | DOCKET NO. TE01050294 |

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated April 30, 2001, NOS Communications, Inc. (Petitioner or NOS) filed a petition with the Board of Public Utilities (Board) requesting authority to provide local exchange telecommunications services throughout the State of New Jersey. By letter dated December 11, 2001, NOS amended its petition to include interexchange services and included a request for waiver of requirements to use the Uniform System of Accounts (USOA) and to use, instead, Generally Accepted Accounting Principle (GAAP). In addition, NOS responded to a Staff questionnaire by letter dated April 16, 2002 and to Staff interrogatories by letter dated May 22, 2002. Petitioner requested confidential treatment of the financial information in Exhibit 5 of its petition and the line counts, financial information and attachment B of its April 16, 2002 letter. In support of this request, Petitioner submitted a motion in Exhibit 6 of its petition and an affidavit dated May 14, 2002 from Joseph Koppy, a corporate officer, stating that allowing the public access to this information would, through disclosure of customer quantity and projected financial information, cause direct and immediate harm to the competitive position of NOS.

According to the petition, NOS was incorporated under the laws of the State of Maryland on November 15, 1989. Petitioner's principal offices are located at 4380 Boulder Highway, Las Vegas, Nevada 81921. Petition at 1.

Petitioner submitted copies of its Articles of Incorporation, Maryland and New Jersey Certificates of Good Standing and its New Jersey Certificate of Authority to Operate as a

Foreign Corporation. May 22, 2002 letter, Exhibit B. According to the petition and its amendment, NOS was formed to provide local exchange and interexchange services. Petition at 1; December 11, 2001 letter. Petitioner advised that it is currently authorized to provide resold interexchange service in all states except Alaska and Hawaii, and local exchange resold service in California, Georgia and New Jersey. In addition, NOS is authorized to provide facilities-based and resold local exchange services in Arkansas, Colorado, District of Columbia, Florida, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, New York, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia and Wyoming. April 16, 2002 letter. NOS advised that it has not been denied authority to provide telecommunications services in any state. NOS advised that it has an interconnection agreement with Verizon New Jersey Inc.

In its petition and amendment, Petitioner advised that it seeks authority to offer local exchange and interexchange telecommunications services to residential and business customers throughout New Jersey. NOS intends to provide service that will include, but not be limited to, basic exchange service, class features, and custom calling features. NOS intends to provide services using unbundled network element platforms and resale. Petition at 8,9.

Petitioner requested a waiver of N.J.S.A. 48:3-7 and N.J.A.C. 14:1-4.3 and 14:10-1.16, which require that its books and records be maintained in accordance with the Uniform System of Accounts (USOA) and within the State of New Jersey. Petitioner requested, in the interest of efficiency and to prevent undue burden, permission to maintain its books and records in accordance with Generally Accepted Accounting Principles (GAAP). Petition at 4; December 11, 2001 letter. Petitioner also requested permission to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices in Las Vegas, Nevada. Petition at 4. Petitioner also stated that, upon written notice from the Board, it will produce its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records. Petition at 4.

Petitioner asserted that approval of its petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petition at 8. Petitioner also asserted that approval of this petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings.

With regard to its technical and managerial qualifications, NOS stated that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petition at 3. Petitioner submitted the professional biographies of its key personnel who, according to NOS, are well qualified to execute its business plans, and have extensive managerial and technical experience in the telecommunications industry. Petition at 3, Exhibit 4.

Petitioner has submitted, as evidence of its financial qualifications, a copy of the most recent financial statement of the corporation and will be required to provide two years of pro forma income statements and balance sheets for its New Jersey operations only, prior to approval of its tariff.

By letter dated June 25, 2002, The New Jersey Division of the Ratepayer Advocate recommended approval of the NOS petition.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat.56, codified in scattered sections of 47 U.S.C. §151 et. seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's decision that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed the NOS petition and the information supplied in support thereof, the Board FINDS that Petitioner has demonstrated that it possesses the requisite financial, technical and managerial resources, which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES Petitioner to provide local exchange and interexchange telecommunications services in New Jersey subject to approval of its tariff and the submission of pro forma financial statements for its New Jersey operations. The Board notes that Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board and the required financial statements have been provided.

Regarding the Petitioner's request for waivers of Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that Petitioner maintain its books and records under the USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board its books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES Petitioner's request for the exemptions from maintaining its books and records in New Jersey and under the USOA.

Regarding the Petitioner's request for confidential treatment of the information submitted as Exhibit 5 of its petition, and in its April 16, 2002 letter, the Board FINDS that the Petitioner has shown good cause that the information merits protection in order to prevent competitive harm by revealing NOS's cash position, liabilities, marketing expenditures and other data regarding which the Petitioner seeks a protective order. Accordingly, the Board GRANTS the Petitioner's motion to keep confidential the information contained in Exhibit 5 and the April 16, 2002 letter. The Board also FINDS that the information is confidential under the Open Public Record Act, N.J.S.A. 47:1A-1 et seq., as amended by L. 2001, c. 404, and will therefore remain exempt after the effective date of that Act, July 7, 2002.

DATED: 6/26/02

BOARD OF PUBLIC UTILITIES
BY:

(signed)
JEANNE M. FOX
PRESIDENT

(signed)
FREDERICK F. BUTLER
COMMISSIONER

(signed)
CAROL J. MURPHY
COMMISSIONER

(signed)
CONNIE O. HUGHES
COMMISSIONER

ATTEST:

(signed)
KRISTI IZZO
SECRETARY